

## SENATE BILL No. 363

### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 7.1-1; IC 7.1-2; IC 7.1-3-17.1; IC 7.1-5; IC 16-18-2; IC 16-46-12; IC 35-46-1-11.5.

**Synopsis:** Tobacco retailers. Requires a person who: (1) sells a tobacco product at retail; (2) sells a tobacco product from a vending machine; or (3) distributes a tobacco product to the public without charge; to register with the Indiana alcoholic beverage commission. Requires a person to register each location where the person wishes to sell or distribute tobacco products. Provides the alcoholic beverage commission with the same powers over tobacco products that the commission has over alcohol and alcoholic beverages. Establishes a \$25 annual tobacco products retailer's registration fee. Creates the youth antismoking education fund. Deposits fees from tobacco products retailer's registrations into the fund. Requires the state department of health to administer the fund. Removes obsolete language.

**Effective:** July 1, 2001.

**Gard**

January 18, 2001, read first time and referred to Committee on Commerce and Consumer Affairs.



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First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

## SENATE BILL No. 363

A BILL FOR AN ACT to amend the Indiana Code concerning alcoholic beverages.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 7.1-1-1-1 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 1. ~~General Purposes.~~  
3 The general purposes of this title ~~are~~ **include the following:**

4 ~~(a)~~ **(1)** To protect the economic welfare, health, peace, and morals  
5 of the people of this state.

6 ~~(b)~~ **(2)** To regulate and limit the manufacture, sale, possession,  
7 and use of alcohol, ~~and~~ alcoholic beverages, and **tobacco**  
8 **products.**

9 ~~(c)~~ **(3)** To provide for the raising of revenue.

10 SECTION 2. IC 7.1-1-2-2 IS AMENDED TO READ AS  
11 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 2. ~~Scope.~~ This title  
12 applies to **the following:**

13 **(1)** The commercial manufacturing, bottling, selling, bartering,  
14 importing, transporting, delivering, furnishing, or possessing of  
15 alcohol, alcoholic beverages, industrial alcohol, malt, malt syrup,  
16 malt extract, liquid malt, or wort.

17 **(2) The sale, possession, and distribution of tobacco products.**



SECTION 3. IC 7.1-1-3-47.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 47.5. (a) "Tobacco product", except as provided in subsection (b), means any product that is made:**

- (1) in whole or in part from tobacco; and**
- (2) for smoking or chewing, or both.**

**The term includes snuff.**

**(b) "Tobacco product", for purposes of IC 7.1-6-1, has the meaning set forth in IC 7.1-6-1-3.**

SECTION 4. IC 7.1-2-2-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: ~~Sec. 5. Prosecutor: Powers and Duties:~~ The prosecutor shall have the following powers and duties:

- ~~(a)~~ **(1)** To prosecute before the commission all violations of laws pertaining to alcohol and alcoholic beverages.
- ~~(b)~~ **(2)** To prosecute before the commission all violations of the rules and regulations of the commission.
- ~~(c)~~ **(3)** To:

**(A)** assist the prosecuting attorneys of the various judicial circuits in the investigation and prosecution of violations of laws pertaining to alcohol, ~~and~~ alcoholic beverages, **and tobacco products; and to**

**(B)** represent the state in these matters.

~~(d)~~ **(4)** To appear before grand juries to assist in their investigations into matters pertaining to alcohol, ~~and~~ alcoholic beverages, **and tobacco products.**

~~(e)~~ **(5)** To establish a seal of ~~his~~ **the prosecutor's** office.

~~(f)~~ **(6)** To administer oaths and to do all other acts authorized by law for notaries public. ~~and;~~

~~(g)~~ **(7)** To employ, with the consent of the commission and at salaries fixed by the commission in ~~their~~ **the commission's** budget, the clerical staff required by ~~him~~ **the prosecutor** to effectively discharge ~~his~~ **the prosecutor's** duties.

SECTION 5. IC 7.1-2-3-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: ~~Sec. 7. Rules and Regulations:~~ The commission shall have the power to ~~promulgate~~ **adopt rules and regulations governing the following:**

- ~~(a)~~ **(1)** The conduct of the meetings and business of the commission.
- ~~(b)~~ **(2)** The conduct of hearings before any of the commission's representatives.
- ~~(c)~~ **(3)** The conduct of the business of a permittee **or registrant**



authorized or governed by the provisions of this title.

~~(d)~~ (4) The enforcement of the provisions of this title and of the rules ~~and regulations~~ of the commission.

~~(e)~~ (5) The standards of purity and methods of manufacturing used in the production of alcohol and alcoholic beverages.

~~(f)~~ (6) The prevention of misbranding or adulteration of alcohol or alcoholic beverages. ~~and~~,

~~(g)~~ (7) The:

(A) prevention of fraud, evasion, trickery, or deceit in the manufacture, labeling, importation, advertisement, transportation, or sale of; ~~alcohol, or alcoholic beverages, or the~~

(B) evasion of other laws of Indiana relating to:

alcohol, ~~or~~ alcoholic beverages, **or tobacco products.**

SECTION 6. IC 7.1-2-3-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 11. ~~Emergencies.~~ The commission shall have the power to prohibit the sale, transportation, or movement of alcoholic beverages **or tobacco products** when, in the judgment of the commission, it is necessary during a time of public emergency, civil disturbance, riot, or epidemic. The prohibition may be:

(1) imposed without prior notice or advertisement; and ~~may be~~

(2) continued in force as long as the need continues.

SECTION 7. IC 7.1-2-3-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 12. ~~Searches and Seizures.~~ (a) The commission shall have the power to examine, inspect, and search a licensed premises or a vehicle where alcohol, alcoholic beverages, ~~or~~ malt articles, **or tobacco products** are kept, manufactured, or sold.

(b) The commission shall have the power to seize alcohol, alcoholic beverages, malt articles, **tobacco products**, or any other personal property when the seizure is lawful under the provisions of this title.

SECTION 8. IC 7.1-2-3-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 19. ~~Regulation of Records.~~ The commission shall have the power to **do the following:**

~~(a)~~ (1) Prescribe the manner and methods by which all records relating to alcoholic beverages **and tobacco products** are kept and preserved.

~~(b)~~ (2) Inspect all records relating to alcoholic beverages and **tobacco products.**

~~(c)~~ (3) Require true copies of any record to be made and furnished to the commission.

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SECTION 9. IC 7.1-2-3-20.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 20.5. The commission has the power to prohibit or regulate by rule the sale of tobacco products within Indiana if the sale violates IC 24-3-2.**

SECTION 10. IC 7.1-2-5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 1. A judge of any court may issue a warrant to search a house or other place for alcohol, an alcoholic liquid or substance, a still, a distilling apparatus, **tobacco product**, or another article that is being possessed, kept, sold, bartered, given away, used, or transported in violation of this title.

SECTION 11. IC 7.1-2-5-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 4. ~~Disposition of Articles Pending Judgment.~~ An alcoholic beverage **or tobacco product** seized pursuant to this chapter and any other article which may be found on the searched premises and taken under the warrant shall not be taken from the custody of the person who served the warrant by a writ of replevin or other process while the proceedings provided in this chapter are pending. A final judgment of conviction in that proceeding shall be a bar in all cases to an action for recovery of the thing seized or the value of it or damages alleged to have arisen by reason of the seizing and detention of it.

SECTION 12. IC 7.1-2-5-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 5. ~~Property Rights Limited.~~ All rights of any kind in an alcoholic beverage **or tobacco product** of any type, or in a container for an alcoholic beverage **or a tobacco product**, or in an article, apparatus, package, fixture, or utensil in which an alcoholic beverage **or a tobacco product** may be placed, or which is used in connection with it, or a vehicle or conveyance in which an alcoholic beverage **or a tobacco product** is being transported or which is used for the transportation of an alcoholic beverage **or a tobacco product**, shall at all times and under all circumstances by whomsoever held, owned, or possessed, be deemed qualified by the right of the state, the commission, and the chairman, to administer, execute, and enforce the provisions of this title.

SECTION 13. IC 7.1-2-5-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 6. ~~Certain Property Rights Prohibited.~~ A person shall have no property right of any kind in alcohol, an alcoholic beverage, ~~or malt article,~~ **or tobacco product**, had, kept, transported, or possessed contrary to law, or in or to a receptacle or container of any kind in which these liquids, **tobacco products**, and articles may be found, or in an unlawful or prohibited

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receptacle or container, or in a receptacle or container which does not conform to or which is being used contrary to or which is not kept in conformity to a rule ~~or regulation~~ of the commission, or which is being used to contain an alcoholic beverage upon which a tax is due and unpaid, or an adulterated or misbranded alcoholic beverage, or which is being used in an unlawful practice, or a practice contrary to a rule ~~or regulation~~ of the commission.

SECTION 14. IC 7.1-2-5-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 8. ~~Forfeiture to State~~. An officer who makes an arrest for a violation of the provisions of this title shall seize the evidence of the commission of that violation, including any vehicle, automobile, boat, air or water craft, or other conveyance in which alcohol, alcoholic beverages, ~~or~~ malt articles, **or tobacco products** are kept, possessed, or transported contrary to law, or contrary to a rule ~~or regulation~~ of the commission. The articles and vehicles mentioned in this section and in ~~IC 1971, 7.1-2-5-5, 7.1-2-5-7,~~ **sections 5, 6, and 7 of this chapter** are hereby declared forfeited to the state and shall be seized.

SECTION 15. IC 7.1-2-5-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 12. ~~Oral Evidence~~. The court shall receive oral testimony also upon a matter referred to in ~~IC 1971, 7.1-2-5-10 and 7.1-2-5-11,~~ **section 11 of this chapter** for the purpose of showing a violation of this title whether the bottle ~~or tobacco product~~ is offered in evidence or not.

SECTION 16. IC 7.1-2-6-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 3. ~~Public Nuisance: Untaxed Liquor~~. A malt article, liquid, alcoholic beverage, ~~or~~ container of a substance or beverage, **or a tobacco product** in respect to which an excise tax or license fee is imposed under this title, **IC 6-7-1, or IC 6-7-2**, and upon which the tax or fee has not been paid, the receptacle in which it is contained and the premises where it is kept or hidden shall constitute a public nuisance.

SECTION 17. IC 7.1-2-6-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 4. ~~Abatement of Public Nuisance~~. The commission, the chairman, the attorney general, a prosecuting attorney, a permittee ~~or registrant~~ authorized to sell alcoholic beverages **or tobacco products** within the county in which a common nuisance exists, **is** kept, **or is** maintained, or a number of permittees ~~or registrants~~ authorized to sell alcoholic beverages **or tobacco products** within the county or elsewhere within the state, or a taxpayer of the county, may maintain an action in the name of the state to abate and perpetually enjoin a public nuisance, or to abate, or

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enjoin, or both, a practice, or conduct of a person, whether a permittee **or registrant** or not, in violation of this title or a rule ~~or regulation~~ of the commission.

SECTION 18. IC 7.1-2-6-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 8. ~~Conditions of Bond.~~ The bond required by ~~IC 1971; 7.1-2-6-7~~, **section 7 of this chapter** shall be conditioned **upon the following:**

(1) That an alcoholic beverage **or a tobacco product** will not thereafter be manufactured, possessed, sold, bartered, given away, furnished, or otherwise disposed of in or on the public nuisance, or kept in or on it with the intent to sell, barter, give away, or otherwise dispose of it contrary to law or to a rule ~~or regulation~~ of the commission. ~~The bond shall be conditioned also~~

(2) That the unlawful conduct or practice, or conduct of another person, whether a permittee **or registrant** or not, the violation of this title or of a rule ~~or regulation~~ of the commission, will not be permitted on or in the premises. ~~The bond shall be conditioned further~~

(3) That the defendant will pay all fines, costs, and damages ~~against him~~ for the **defendant's** violation of this title.

SECTION 19. IC 7.1-3-17.1 IS ADDED TO THE INDIANA CODE AS A **NEW CHAPTER** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]:

**Chapter 17.1. Tobacco Products Retailer's Registration**

**Sec. 1. The commission shall register a tobacco products retailer who desires to:**

- (1) sell a tobacco product at retail;
- (2) sell a tobacco product from a vending machine; or
- (3) distribute a tobacco product to the public without charge.

**Sec. 2. A person must obtain a separate tobacco products retailer's registration to do each of the following:**

- (1) Sell a tobacco product at retail.
- (2) Sell a tobacco product from a vending machine.
- (3) Distribute a tobacco product to the public without charge.

**Sec. 3. A person that owns or operates more than one (1) location where the person wishes to:**

- (1) sell a tobacco product at retail;
- (2) sell a tobacco product from a vending machine; or
- (3) distribute a tobacco product to the public without charge;

**must register separately each tobacco products retailer's location.**

**Sec. 4. (a) The annual registration fee for a tobacco products retailer is twenty-five dollars (\$25) per location.**



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(b) **The chairman shall deposit money collected from fees under this chapter in the youth antismoking education fund established under IC 16-46-12.**

SECTION 20. IC 7.1-5-1-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 1. ~~Prohibition Against Commercial Purposes.~~ It is unlawful for a person to:

(1) manufacture for sale, bottle, sell, barter, import, transport, deliver, furnish, or possess, alcohol or alcoholic beverages, malt, malt syrup, malt extract, liquid malt, or wort; **or**

(2) **sell, possess, or distribute a tobacco product;**  
for commercial purposes except as authorized in this title.

SECTION 21. IC 7.1-5-10-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 5. ~~Sale Without Permit Prohibited.~~ It is unlawful for a person, except as otherwise permitted by this title, to **do the following:**

(1) Purchase, receive, manufacture, import, or transport, or cause to be imported or transported from another state, territory, or country, into this state, or transport, ship, barter, give away, exchange, furnish, or otherwise handle, or dispose of an alcoholic beverage. ~~or to~~

(2) Possess an alcoholic beverage **or a tobacco product** for purpose of sale.

It is unlawful, also, for a person knowingly to receive or acquire an alcoholic beverage from a person who does not hold, unrevoked, the appropriate permit under this title to sell, deliver, furnish, or give the alcoholic beverage to him.

SECTION 22. IC 16-18-2-143, AS AMENDED BY P.L.14-2000, SECTION 43, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 143. (a) "Fund", for purposes of IC 16-26-2, has the meaning set forth in IC 16-26-2-2.

(b) "Fund", for purposes of IC 16-46-5, has the meaning set forth in IC 16-46-5-3.

(c) **"Fund", for purposes of IC 16-46-12, has the meaning set forth in IC 16-46-12-1.**

SECTION 23. IC 16-18-2-351.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 351.7. "Tobacco product", for purposes of IC 16-46-12, has the meaning set forth in IC 16-46-12-2.**

SECTION 24. IC 16-46-12 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]:

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**Chapter 12. Youth Antismoking Education Fund**

**Sec. 1.** As used in this chapter, "fund" refers to the youth antismoking education fund established under section 3 of this chapter.

**Sec. 2.** As used in this chapter, "tobacco product" has the meaning set forth in IC 7.1-1-3-47.5.

**Sec. 3.** The youth antismoking education fund is established for the purposes of:

- (1) educating the youth of Indiana to prevent members of this group from beginning to use tobacco products; and
- (2) encouraging the youth of Indiana who use tobacco products to cease using tobacco products.

**Sec. 4.** The fund shall be administered by the state department. The expenses of administering the fund shall be paid from money in the fund.

**Sec. 5.** The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public funds may be invested. Interest that accrues from these investments shall be deposited in the fund.

**Sec. 6.** Money in the fund at the end of a state fiscal year does not revert to the state general fund.

**Sec. 7.** Money in the fund consists of the following:

- (1) Money deposited under IC 7.1-4-1-45(b).
- (2) Appropriations.
- (3) Grants.
- (4) Gifts.

**Sec. 8.** The state department may use money in the fund to participate in joint ventures with other governmental agencies or public or private entities to carry out the purposes of the fund.

SECTION 25. IC 35-46-1-11.5, AS AMENDED BY P.L.14-2000, SECTION 73, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 11.5. (a) Except for a coin machine that is placed in or directly adjacent to an entranceway or an exit, or placed in a hallway, a restroom, or another common area that is accessible to persons who are less than eighteen (18) years of age, this section does not apply to a coin machine **that is owned or operated by a person that has obtained a tobacco products retailer's registration under IC 7.1-3-17.1** and that is located in the following:

- (1) That part of a licensed premises (as defined in IC 7.1-1-3-20) where entry is limited to persons who are at least eighteen (18) years of age.
- (2) Private industrial or office locations that are customarily

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accessible only to persons who are at least eighteen (18) years of age.

(3) Private clubs if the membership is limited to persons who are at least eighteen (18) years of age.

(4) Riverboats where entry is limited to persons who are at least twenty-one (21) years of age and on which lawful gambling is authorized.

(b) As used in this section, "coin machine" has the meaning set forth in IC 35-43-5-1.

(c) Except as provided in subsection (a), an owner of a retail establishment may not:

(1) distribute or sell tobacco by use of a coin machine; or

(2) install or maintain a coin machine that is intended to be used for the sale or distribution of tobacco.

(d) An owner of a retail establishment who violates this section commits a Class C infraction. A citation or summons issued under this section must provide notice that the coin machine must be moved within two (2) business days. Notwithstanding IC 34-28-5-4(c), a civil judgment for an infraction committed under this section must be imposed as follows:

(1) If the owner of the retail establishment has not been issued a citation or summons for a violation of this section in the previous ninety (90) days, a civil penalty of fifty dollars (\$50).

(2) If the owner of the retail establishment has had one (1) citation or summons issued for a violation of this section in the previous ninety (90) days, a civil penalty of two hundred fifty dollars (\$250).

(3) If the owner of the retail establishment has had two (2) citations or summonses issued for a violation of this section in the previous ninety (90) days for the same machine, the coin machine shall be removed or impounded by a law enforcement officer having jurisdiction where the violation occurs.

An owner of a retail establishment may not be issued a citation or summons for a violation of this section more than once every two (2) business days for each business location.

(e) Notwithstanding IC 34-28-5-4(c), civil penalties collected under this section must be deposited in the youth tobacco education and enforcement fund established under IC 7.1-6-2-6.

SECTION 26. IC 7.1-2-3-20 IS REPEALED [EFFECTIVE JULY 1, 2001].

SECTION 27. [EFFECTIVE JULY 1, 2001] (a) As used in this SECTION, "tobacco product" has the meaning set forth in

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1     **IC 7.1-1-3-47.5, as added by this act.**  
 2         **(b) Notwithstanding IC 7.1-3-17.1, as added by this act, a person**  
 3     **who:**  
 4         **(1) sells a tobacco product at retail;**  
 5         **(2) sells a tobacco product from a vending machine; or**  
 6         **(3) distributes a tobacco product to the public without charge;**  
 7     **is not required to have a tobacco products retailer's registration.**  
 8         **(c) This SECTION expires January 1, 2002.**

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